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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. EP 712

IMPROVING REGULATION AND REGULATORY REVIEW

**COMMENTS OF THE
AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION**

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The American Short Line and Regional Railroad Association (“ASLRRA”) represents approximately 450 class II and class III railroads in the United States, Canada and Mexico as well as numerous suppliers and contractors to the short line and regional railroad industry. ASLRRA appreciates the opportunity to comment on Board regulations that, “in light of sufficient experience, have proven to be outmoded, ineffective, insufficient, or excessively burdensome”¹. With regard to regulatory issues with relevance to the entire rail industry ASLRRA supports the Comments of the Association of American Railroads resulting from its detailed review of the complete Surface Transportation Board regulatory framework and incorporates AAR’s recommendations by reference into these Comments.²

ASLRRA will otherwise limit its Comments to regulation which has had particular relevance to small railroads since the creation of the Surface Transportation Board. Given the very real limitation of resources –financial, operational and human –available to most small railroads, the most significant regulatory impact for them has been the Board’s use of the exemption authority granted by Congress in 49U.S.C.10502. Detailed reporting requirements, large filing fees and protracted adjudication proceedings may be a cost of doing business for Class I railroads, but absent the relief from those burdens which the use of the exemption authority offers, small railroads would find it almost impossible to do business.

ASLRRA encourages the Board to expand the use of so-called Notice Exemptions wherever possible and urges the Board to focus on two aspects of small railroad operations to start. The first addresses the exemption at the inception of a small railroad, and the second focuses on the exemption when the life of a rail line must end through abandonment.

¹ Ex Parte 712, *Decision*, Dec. 21, 2011

² ASLRRA particularly draws the Board’s attention to those sections of AAR’s Comments that have direct relevance to small railroads. Specifically, they are: I. Abandonment Procedures, II. Environmental and Historical Review Process, and V. General Procedural and Filing Requirements.

At the outset ASLRRRA proposes that the Board expand the exemption set forth in 49 CFR 1180.2(d)(2) to cover the acquisition and control of Class III carriers regardless of whether they connect with other railroads in a corporate holding company of small railroads. When a family of short line carriers starts a new operation with a new carrier, an applicant must obtain two authorizations - (1) authority under 49 USC 10901 to acquire/lease and operate the new line by the new carrier, and (2) authority to commonly control the new carrier together with the other carriers already controlled by the family under 49 USC 11323. To satisfy the requirements of §10901 a qualifying applicant new carrier may simply file a notice of exemption under the provisions of 49 CFR 1150 Subpart D, and operating authority is typically effective 30 days thereafter.

Similarly, the authority for common control under §11323 is eligible for a class exemption under 49 CFR 1180.2(d)(2), but only if the new carrier will not connect with other railroads in the corporate family, and the control is not part of a series of anticipated transactions that would connect the railroads with any railroad in the corporate family, and the transaction does not involve a Class I carrier. If eligible for the exemption, the corporate parent can file a notice of exemption under 49 CFR 1180.4(g) which becomes effective 30 days after filing and concurrently with the §10901 exemption.

If the new carrier *does* connect with other railroads in the corporate family, the corporate parent must file either an application, or a petition for an individual exemption from the application procedures under 49 USC 10502. Not only is the filing fee for the individual waiver exemption substantially higher than the notice of exemption (\$9,300 vs. \$1,800)³, but it is very unlikely that the petition will be granted by the time the §10901 exemption becomes effective. This then requires the corporate parent to either (1) delay the transaction until control authority is granted, or (2) if it wants to proceed with the acquisition/lease, place the stock of the new carrier into a voting trust which involves additional costs for the preparation of the trust, the trustee, and the transfer of stock into and out of the hands of the trustee.

ASLRRRA is not aware of any Petition for Exemption to allow common control of connecting Class III carriers that has ever been denied by the Board. Presumably the basis for such a denial and the rationale for omitting connecting railroads from the notice exemption in the first place is to prevent undue concentration of market power within a region. However, ASLRRRA believes that the Board's history of approving Exemption Petitions reflects the reality that where the connecting railroads are class III railroads, even if there are several that connect, the risk of excess market power is miniscule. Therefore, to save the significant additional costs and time required in a Petition for Exemption and to eliminate the delay of waiting for control authority or the use of a voting trust, ALSRRA proposes a revision of 49 CFR 1180.2(d)(1) to expand the exemption to include connecting Class III carriers as follow:

§1180.2(d)(2). Acquisition or continuance in control of (i) a Class III carrier or one of its lines, or (ii) a nonconnecting Class II carrier or one

³ 49 CFR 1002.2(f)

of its lines where (A) the nonconnecting Class II carrier would not connect with any railroads in the applicant's corporate family, and (B) the acquisition or continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in the applicant's corporate family. The foregoing shall not be exempt if the transaction involves a class I carrier.

ASLRRA proposes an additional expansion of the use of Notice Exemptions at the end of a rail line's useful life. Currently the Board allows railroads to follow the simplified and relatively expeditious notice exemption procedures for abandonments when there has been no traffic on the line for two years under 49 CFR 1152.50. Otherwise, procedures for abandonments which do not fall within the exemption are Byzantine in complexity and glacial in speed⁴. Complex, lengthy and often pointless environmental and historical reviews are required. For a railroad with tens of thousands of miles of track, the occasional abandonment of a few miles of track can be scheduled and this protracted process can be accommodated without significant impact upon the remaining railroad system. As with so many other aspects of the rail industry, it is a far different story for small railroads.

In an industry where the average system is less than 75 miles of right of way⁵ even a five mile section of right of way is a significant part of the operation and represents a substantial investment by the operator. Thus, where the notice exemption is not available lengthy and expensive abandonment procedures rob small Class III carriers of capital assets which could be better used to expand demand-driven operations. Instead, those assets are frozen for years. Operating decisions are based on abandonment alternatives rather than service needs. Even worse, in some cases lines are de facto abandoned for decades, yet remain 'on the books', at least at the Board.

Conditions have changed significantly in the years since the abandonment rules were established. In the early years of the Board's history Class I railroads were still in the midst of rationalizing their systems, spinning off large segments of underutilized lines and aggressively seeking to abandon those that were simply not viable. Small railroad recipients of many of those lines were able to succeed on many, but enough proved not to be viable that small railroad abandonments were regular occurrences. It made sense in that high volume abandonment environment to tread carefully to assure the massive restructuring did not damage the viable interstate rail network.

Today most of that rationalization process is completed. Small railroads for the most part now operate lines that make sense for contemporary traffic patterns. Small railroads have had at least a decade's experience to operate and adjust since the winding down of the high point of rail rationalization. Armed with this experience with their routes, small railroads have shown to be well positioned to win traffic and serve today's shipper requirements. In order to do that, however, they should not have to make the Hobson's choice of sitting on unutilized assets for two years before reinvesting them

⁴ See 49 CFR 1152.1 et sec.

⁵ ASLRRA Short Line and Regional Facts and Figures, 2009

where today's traffic demands or submitting to a protracted, arcane and very expensive abandonment process.

In recognition of the exponentially greater impact the current abandonment rules impose on small railroads, and the necessity for nimble procedures to meet the quickly changing needs of the twenty-first century transportation network, ASLRRA proposes the Board reduce the no-traffic test for notice exemptions from two years to one for Class III railroads. The current notice exemption provisions require reasonable notice to shippers, labor and other constituents. In today's world of instantaneous electronic communication, ASLRRA's proposal for a one year no-traffic period is more than adequate to assure that any potential shipper who might desire service has an opportunity to make its interest known.

In response to the Board's invitation to address outmoded regulatory requirements, ASLRRA respectfully urges the Board revise its regulations to expand the highly successful notice exemption procedures by (1) including connecting Class III railroads who seek common control authority under 49 CFR 1180.2(d)(2), and (2) reducing the requirements for no-traffic notice exemption abandonments on Class III railroads to one year.

Respectfully Submitted,

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